IN THE

Supreme Court of the United States

OCTOBER TERM, 1978.

No. 78-1059

THOMAS L. BEAGLEY, as President of and on behalf of the class of members of LOCAL 336, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Petitioner,

VS.

LILLIAN B. ANDEL, ALICE M. AUGUSTINE, MICHAEL BEHAN, DOROTHY G. BLUNK, ROBERT L. FORTIN, GEORGE P. KAFORSKI, JOSEPH KIRKWOOD, REBA M. KNIGHT, PRISCILLA L. MURPHY, CLARENCE E. OTT, ELIZABETH J. POTOKAR, JACK G. PRONCUNIER and EVAN K. WILKIN, JR.,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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OPINION BELOW

The opinion of the Illinois Appellate Court is reported at 58 Ill. App. 3d 588, 374 NE2d 929 (1978), and appears in the appendix to the petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED

Whether the common law rule that an unincorporated association cannot sue or be sued at law in the name of its president violates the federal Constitution.

STATUTE INVOLVED

The only statute involved is quoted on pages 3 and 4 of the petition. It merely provides that the common law controls in Illinois in the absence of statute. This was the rule in Illinois even before it became a state, and was enacted at the very first session of its legislature. Laws, 1819, p. 3; *Bulpit* v. *Mathews,* 145 Ill. 345, 34 NE 525, 526 (1893); *Penny* v. *Little,* 4 Ill. 301 (1841). It had its formal origin in Virginia in 1776, and was in force in Illinois when it was still a territory.

STATEMENT OF THE CASE

The statement of the case in the petition is adequate for this purpose, except that the footnote and the last sentence of that statement are incorrect.

ARGUMENT

I. There Is No Substantial Federal Question

The petition cites only two federal grounds for granting the writ—impairment of contracts, and denial of equal protection. Neither has the slightest substance here.

Illinois has not passed any "law impairing" or "denied" anything. It has merely observed a basic common law rule which was ancient in 1789. If an unincorporated association of any kind wishes to sue (or be sued) at law as an entity in Illinois courts it must first observe one of the simple statutory procedures for incorporation. Until it chooses to do that, it is not a separate entity in the eyes of the Illinois law, and must therefore sue and be sued in the names of its individual members, just as a partnership does. The Illinois Supreme Court has never used any other rule for suits at law. The Illinois legislature has not seen fit to change this rule, except in one respect not here involved. Ill. Rev. Stat., c. 30 § 185 (real estate).

This was the rule long before Local 336 was organized, and also when the events occurred in 1968 which produced this law suit. It was always a limitation on suits at law by Local 336, and also on any such suits which might be brought against it. Congress has seen fit to change that rule in certain suits brought under Section 301 of the Labor Management Relations Act. 29 USC 185. But it has not done so in any way which would affect the result of this case.

United States Trust Co. v. *New Jersey,* 431 U.S. 1 (1977), stressed on pages 6 and 8 of petitioner's brief, is completely different. In that case, New York and New Jersey agreed to an important contract clause in 1962, and later tried to repeal it by new laws passed in 1974. The *El Paso* and *Home Building* cases, cited in the same paragraph on page 6, approve new laws which changed the prior situation, and are even less in point for this petition. But Local 336 has not lost any contract rights; it never had the right which it now claims.

We do not contend that no common law rule can ever violate the Constitution, but we are unable to visualize a modern situation in which that could occur. The Constitution has always been drafted and interpreted by experts in the common law in the light of all of its principles and customs. It would take a much stronger argument than anything found in this petition to make the common law unconstitutional.

II. There Is No Issue of General Public Importance

So far as we can tell from this record, this is the only case in which this union has ever wanted to sue any of its members, and it involves only these 13 respondents

about ten years ago. It is not shown that this union or any other group has ever been seriously inconvenienced by the common law rule. Contrary to the statements in the petition, the Illinois courts have not refused to allow a union to sue at law, but rather have required that it sue in a traditional (and admittedly difficult) way. If the union had been the defendant, Illinois would have applied the same requirement to any plaintiff, *i.e.*, that he must name all of the union members as individuals. *Boozer* v. *United Auto Workers,* 4 Ill. App.3d 611, 279 NE2d 428 (1972); *Kingsley* v. *Amalgamated Meat Cutters,* 323 Ill. App. 353, 55 NE2d 554 (1944); *Cahill* v. *Plumbers Local 93,* 238 Ill. App. 123 (1925). Thus, the common law rule clearly benefits this union if it should be sued for damages. Nevertheless, this is the second time that petitioner has come all the way to this Court about this one tempest in a teapot, having lost each time in all of the lower courts. *I.B.E.W., Local 336* v. *Illinois Bell Telephone Co., certiorari denied,* 419 U.S. 879 (1974). *Gratz* v. *Cozart,* 13 Ill. App.2d 515, 142 NE2d 833 (1957), cited on page 5 of the petition, does allow a union to sue at law by first transferring its assets to a receiver.

The overall effect of the Illinois decisions is simply too localized and minor to warrant this Court's attention. Petitioner has not suffered the serious difficulties found in *Shapiro* v. *Thompson,* 394 U.S. 618 (1969), and the other cases cited near the bottom of page 8 of its brief. The whole matter is meaningless to most people. It is not even remotely comparable in importance to welfare, voting or school finances, which were the subjects of the three authorities there cited. The brief's sweeping language about "fundamental rights" and the alleged absence of a "compelling" state interest is only a gross exaggeration.

There is no conflict of decisions.

CONCLUSION

The petition should be denied and this ancient controversy closed.

Respectfully submitted,

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